

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12607 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MANGABHAI CHANDUBHAI VASAVA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 12607 of 2002
MS DR KACHHAHAH for Petitioner No. 1
MR KAMLESH KACHHAHAH for Petitioner No. 1
MS HARSHA DEVANI, APP, for Respondent No. 1-3
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu
has challenged his detention order dated 9.9.2002 by

which he is detained as a bootlegger under PASA. Along with the detention order he is served with the grounds of detention. There is reference about one criminal case which is filed against the petitioner under the Bombay Prohibition Act. There is also a reference about some statement of witnesses. The aforesaid order is challenged by the petitioner on various grounds.

2. On behalf of the petitioner, it is submitted that there is delay in deciding the representation of the petitioner. The petitioner made a representation through his advocate on 21.12.2002 and the said representation was rejected on 23.12.2002 which was communicated to the petitioner on 5.1.2003. The said communication is placed on record. It is submitted that in view of delay in deciding the representation, the petitioner is required to be released.

3. Learned AGP Ms Devani, however submitted that the representation of the petitioner was received by the Department on 26.12.2002 and the same was ultimately decided on 30.12.2002.

4. However, it is required to be noted that State has not filed any reply explaining this delay. Even if the aforesaid submission is accepted, there is a delay of about 4 days in deciding the representation of the petitioner. Since the said delay is not explained, there is no other alternative but to release the petitioner on the aforesaid ground. Appropriate explanation was required to be given for the said delay and the delay is required to be explained satisfactorily which has not been done in this case. In that view of the matter, the petition is required to be allowed on the aforesaid ground of delay in deciding the representation.

5. For the foregoing reasons, the petition is allowed. The order of detention dated 9.9.2002 is quashed and set aside. The detenu, Mangabhai Chandubhai Vasava is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J)

zgs/-